

SERVICES AGREEMENT
BY AND BETWEEN
THE TEXAS DIVISION OF EMERGENCY MANAGEMENT
AND SPARTAN MEDICAL
C2020-1859

This Services Agreement ("**Agreement**") is entered into and made effective as of August 17, 2020 (the "**Effective Date**"), by and between The Texas Division of Emergency Management, a member of The Texas A&M University System ("**A&M System**"), an agency of the state of Texas (hereinafter referred to as "**TDEM**"), and Spartan Medical, (hereinafter referred to as "**PROVIDER**"). TDEM and PROVIDER are sometimes hereinafter referred to as "**Party**" individually or "**Parties**" collectively.

WHEREAS, PROVIDER has established licensed clinical laboratories to test for the coronavirus disease 2019 ("**COVID-19**") caused by the severe acute respiratory syndrome coronavirus 2 ("**SARS-CoV-2**");

WHEREAS, TDEM is charged with carrying out a comprehensive all-hazard emergency management program for the state of Texas and assisting cities, counties, and state agencies in planning and implementing their emergency management programs;

WHEREAS, on March 11, 2020, the World Health Organization announced that the outbreak of COVID-19 can be characterized as a pandemic; on March 13, 2020, the president of the United States declared a national emergency and the governor of the State of Texas declared a state of disaster in Texas; and on March 25, 2020, the president of the United States issued a Major Disaster Declaration for the State of Texas (the "**COVID-19 Pandemic**");

WHEREAS, in light of the COVID-19 Pandemic, TDEM desires to utilize PROVIDER's services to provide COVID-19 testing to Texas residents (the "**Patients**"); and

WHEREAS, the activities contemplated under this Agreement are of mutual interest and benefit to the Parties.

NOW THEREFORE, in consideration of the mutual covenants and premises contained in this Agreement, the receipt and sufficiency of which is acknowledged, TDEM and PROVIDER hereby agree as follows:

1. **SCOPE OF WORK**

Consistent with the provisions of this Agreement, PROVIDER shall provide the services detailed on Exhibit A attached hereto (the "**Services**").

2. **TERM**

This Agreement shall begin on the Effective Date and continue through August 31, 2021 (the "**Initial Term**"), unless sooner terminated in accordance with Section 4 hereof. Upon mutual written agreement of the Parties, the Initial Term may be renewed for additional

one (1) year terms (each, a “**Renewal Term**” and collectively with the Initial Term, the “**Term**”), provided that in no event shall the Term exceed five (5) years.

3. **PAYMENT TERMS**

- A. For the Services rendered under this Agreement, TDEM shall pay PROVIDER a firm-fixed-price of \$170 per PCR test & Antibody test (as defined on Exhibit A hereto). This amount shall be inclusive of all necessary expenses for the provision of all Services under this Agreement, including but not limited to, the supply of the kits, laboratory services, and reporting of Lab Results (as defined on Exhibit A hereto). Please see the attached MCI Diagnostic COVID-19 Testing Fees document.
- B. **Competitive Pricing.** The prices, terms, and conditions under this Agreement must be equal to or better than those offered to any other customer of PROVIDER. To the extent PROVIDER is not in compliance with this Section 3B, PROVIDER must refund TDEM the difference between the pricing under this Agreement and the lower, competitive price in violation of this Section 3B. Within thirty (30) days of TDEM’s determination that PROVIDER is not in compliance, PROVIDER agrees that it will (i) provide TDEM with the more favorable prices, terms, and conditions, (ii) amend this Agreement to reflect the change in pricing, and (iii) and issue any required refund.
- C. PROVIDER will invoice TDEM for the Services actually rendered by PROVIDER each month; provided that, PROVIDER will only bill TDEM (i) the full cost of the Kits for which Lab Results were reported to the Patients within 72 hours of the specimens’ arrival at PROVIDER’s laboratory; (ii) 50% of the cost of the Kits for which Lab Results were reported to the Patients between 72-96 hours of the specimens’ arrival at PROVIDER’s laboratory; and (iii) \$0 for the Kits for which Lab Results were reported to the Patients more than 96 hours after the specimens’ arrival at PROVIDER’s laboratory.
- D. Payment will be made to PROVIDER upon approval of such invoice by TDEM. It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment law. Generally, payment will be made on the 30th day unless a discount has been arranged for more immediate payment.
- E. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to TDEM a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at:
<https://fmo.tamu.edu/media/395081/substitute-w9-2019.pdf>
- F. All invoices must include detail regarding the Services actually rendered by PROVIDER in that month.

4. **DEFAULT AND TERMINATION**

- A. In the event of a substantial failure by either Party to perform in accordance with the terms hereof, the non-defaulting Party may terminate this Agreement upon fifteen (15) days' written notice setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of the non-defaulting Party.
- B. Either Party may terminate this Agreement at any time upon thirty (30) days' prior written notice to the other Party.
- C. In the event PROVIDER is utilizing a COVID-19 test authorized by the U.S. Food and Drug Administration ("FDA") pursuant to an Emergency Use Authorization ("EUA"), PROVIDER shall promptly submit written notice to TDEM if the EUA is terminated or revoked sooner under Section 564(g) of the Federal Food, Drug, and Cosmetic Act (an "EUA Termination"). In the event of an EUA Termination, TDEM may terminate this Agreement immediately without liability or penalty.
- D. TDEM has the right to immediately terminate this Agreement, without penalty, in the event of (i) PROVIDER's gross negligence, willful misconduct, or sanction by the Centers for Medicare and Medicaid Services ("CMS"), the Office of the Inspector General or another governmental entity, (ii) PROVIDER's violation of any Applicable Law (as defined below), or (iii) a filing by or against PROVIDER of a petition in bankruptcy or in equity for receivership or for reorganization under the *United States Bankruptcy Code*, as now or hereafter amended, which filing is not withdrawn or vacated within thirty (30) days.
- E. Upon the expiration or termination of this Agreement for any reason, (i) TDEM shall pay PROVIDER any fees for Services rendered through the effective date of the expiration or termination, and (ii) PROVIDER shall process and communicate Lab Results to Patients for any and all return shipments of Kits received through the effective date of the expiration or termination.

5. **CONFIDENTIALITY**

Each Party recognizes and acknowledges that, by virtue of entering into this Agreement and performing their respective obligations hereunder, each Party may have access to certain information of the other Party that is confidential and constitutes proprietary, valuable, special, and unique property of the other Party. To the extent allowed by the laws and Constitution of the State of Texas without regard to its conflicts of law statutes or principles, the Parties agree that they shall not at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without the express prior written consent of the other Party whose confidential information is so disclosed or used, except pursuant to the performance of such Party's duties hereunder, any confidential or proprietary information of the other Party, including, but not limited to, information which concerns patients and costs which is not otherwise available to the public. Any information owned by either Party shall remain the property of the disclosing Party.

6. **PUBLIC INFORMATION**

- A. PROVIDER acknowledges that TDEM is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.
- B. Upon TDEM's written request, PROVIDER will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of TDEM.
- C. PROVIDER acknowledges that TDEM may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.
- D. The requirements of Subchapter J, Chapter 552, *Texas Government Code*, may apply to this Agreement, and PROVIDER agrees that the agreement can be terminated if the PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.

7. **DISPUTE RESOLUTION**

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TDEM and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to the Chief of TDEM, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

8. **INSURANCE**

PROVIDER's insurance requirements are detailed in Exhibit B attached hereto.

9. **HIPAA COMPLIANCE**

- A. Each Party hereto will comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement, including but not limited to the Healthcare Laws (as defined below) (collectively, "**Applicable Law**").
- B. Under this Agreement, PROVIDER may create, or have access to, records or record systems that contain data protected or made confidential or sensitive by applicable federal, state, and local laws, rules, and regulations (collectively, "**Patient Records**"). PROVIDER will comply with all applicable federal, state, and local laws, rules, and regulations relating to the maintenance, uses, and disclosures of such Patient Records ("**Healthcare Laws**"), including but not limited to, the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder and Subtitle D of the Health Information Technology for

Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder. PROVIDER agrees to enter into any necessary Business Associate Agreements with appropriate entities for the provision of the Services or sharing of Patient Records under this Agreement. At the request of TDEM, PROVIDER may provide TDEM with de-identified components of Patient Records, provided that such sharing is conducted in accordance with all applicable Healthcare Laws.

- C. PROVIDER will maintain security policies, protocols, and procedures that are consistent with industry standards for similar businesses. In the event of an access to Patient Records, or use or disclosure of Patient Records, that is or would be impermissible under any Applicable Law related to the privacy and security of the Patient Records, PROVIDER shall be responsible for responding to the incident as required by any Applicable Law related to the privacy and security of the Patient Records (including, but not limited to, any application data breach notification laws) and for providing all notifications that are or would be required under any such Applicable Law. In addition to the foregoing, in the event of an impermissible access, use, or disclosure of Patient Records, PROVIDER shall provide TDEM with notice of the incident within five (5) days of discovery, and TDEM shall have the right to terminate this Agreement immediately without liability or penalty.

10. **REGULATORY COMPLIANCE**

- A. PROVIDER represents and warrants that its laboratories are, and shall remain, duly licensed clinical laboratories under applicable federal, state, and municipal law. Failure to maintain accreditation may result in immediate termination of this Agreement. PROVIDER shall obtain and maintain all licenses, permits, and certifications required by applicable state and federal government authorities for the provision of the Services hereunder including, but not limited to, the Clinical Laboratory Improvement Act of 1998 ("CLIA"). Upon request, PROVIDER shall provide TDEM with proof that PROVIDER is approved by CMS to provide laboratory services and is licensed or registered in its state(s) of operation. PROVIDER will perform all tests in compliance with any standard, ruling, or regulation of The Joint Commission, the U.S. Department of Health and Human Services, CLIA, or any other governmental agency responsible for administering, regulating, or accrediting healthcare facilities or professionals.
- B. PROVIDER will maintain records in such form and for such duration as may be required by Applicable Laws, and to make available to the Department of Health and Human Services, the U.S. Comptroller General and their designees upon reasonable request and in a reasonable manner its books, documents, and records relating to its provision of the Services hereunder as may be required by Applicable Laws.

11. **REPRESENTATIONS AND WARRANTIES**

PROVIDER represents and warrants that all tests supplied hereunder shall be (a) manufactured in accordance with Applicable Law and (b) free from defects under normal use and that all work under this Agreement will comply with all Applicable Laws.

12. **INDEMNIFICATION**

PROVIDER shall indemnify the A&M System and TDEM, and their regents, employees, students, and agents for claims arising from (i) PROVIDER's breach of this Agreement, (ii) the performance of the Services under this Agreement, (iii) actual or alleged billing errors, false claims, or insurance fraud relating to claims made by PROVIDER for any Services, or (iv) the negligent or intentional acts or omissions of PROVIDER or its employees, contractors or agents.

13. **MISCELLANEOUS**

- A. **Independent Contractor.** PROVIDER is an independent contractor, and neither PROVIDER nor any employee of PROVIDER shall be deemed to be an agent or employee of TDEM. TDEM will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status.
- B. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- C. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- D. **Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits TDEM from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If PROVIDER is an individual, by signing this Agreement, PROVIDER certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

- E. **Not Eligible for Rehire.** PROVIDER is responsible to ensure that employees participating in work for TDEM have not been designated by the A&M System as Not Eligible for Rehire as defined in System policy 32.02, Section 4. Non-conformance to this requirement may be grounds for termination of this Agreement.
- F. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
- G. **State Auditor's Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "**Auditor**"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- H. **Entire Agreement.** This Agreement constitutes the sole agreement of the Parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this Agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both Parties.
- I. **Severability.** If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such a manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.
- J. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- K. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of TDEM.
- L. **HUB Subcontracting Plan.** If a subcontractor will be used to provide any commodity or service as part of the scope on a specific assignment, the PROVIDER will be required to make a good faith effort and complete the state of Texas HSP that will be provided by contacting Mary Williams at me-williams@tamu.edu or (979) 458-7434. If there are pre-existing agreements in place with companies who will be hired as subcontractors, the PROVIDER will show those companies as subcontractors on the HSP and provide an explanation as to why solicitations were not done, e.g. contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the PROVIDER will be expected to make a good faith effort according to the HSP instructions.

- M. In the event that you determine you will be using a subcontractor, please contact Mary Williams for assistance in determining available HUB subcontractors and proper completion of the HSP.
- N. **Force Majeure.** Neither Party will be in breach of its obligations under this Agreement (other than payment obligations for Services received up to Force Majeure event) or incur any liability to the other Party for any losses or damages of any nature whatsoever incurred or suffered by that other Party if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure (as defined below), except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure had not occurred. “**Force Majeure**” is defined as: 1) acts of God; 2) war; 3) act(s) of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strike(s); 9) loss or shortage of transportation facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 11) interruptions by government or court orders (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction; 13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemic(s), pandemic(s), or other national, state, or regional emergency(ies); and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the Party whose performance is affected and which by the exercise of all reasonable due diligence, such Party is unable to overcome. Such excuse from performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform the obligation(s). Written notice of a Party’s failure or delay in performance due to Force Majeure must be given within a reasonable time after its occurrence and must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). Notwithstanding the foregoing, a Party’s financial inability to perform its obligations shall in no event constitute a Force Majeure. For the avoidance of doubt, COVID-19 and any governmental changes or closures related thereto shall be deemed Force Majeure events under this Section, even to the extent reasonably foreseeable by either Party as of the Effective Date.
- O. **Loss of Funding.** Performance by TDEM under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “**Legislature**”). If the Legislature fails to appropriate or allot the necessary funds, TDEM will issue written notice to PROVIDER, and TDEM may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of TDEM.
- P. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction,

shall be governed and determined by the Constitution and the laws of the State of Texas.

- Q. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TDEM shall be in the county in which the primary office of the chief executive officer of TDEM is located, which is Travis County, Texas.
- R. **Non-Waiver.** PROVIDER expressly acknowledges that TDEM is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TDEM of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- S. **Conflict of Interest.** By executing this Agreement, PROVIDER and each person signing on behalf of PROVIDER certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of the A&M System or the A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by the A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.
- T. **Prohibited Bids and Agreements.** A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: "Under Section 2155.004, *Texas Government Code*, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."
- U. **Access by Individuals with Disabilities.** PROVIDER represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to TDEM under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*). To the extent PROVIDER becomes aware that the EIRs, or any portion thereof, do not comply then PROVIDER represents and warrants that it will, at no cost to TDEM, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.
- V. **Copyrights & Patents.** PROVIDER shall not provide to TDEM any materials or services that infringe any intellectual property, privacy, or other right of any party. If PROVIDER becomes aware of any possible infringement claims, PROVIDER shall immediately notify TDEM in writing. As to any judicial, administrative, or other action, suit, claim, investigation, or proceeding (each a "Proceeding") alleging that any such material or service infringes any intellectual property, privacy, or other right, PROVIDER shall indemnify and defend A&M System and TDEM, and their regents, officers, employees, representatives, agents, and students

those Indemnitees against all: (a) amounts awarded in, or paid in settlement of, that Proceeding, including any interest, and (b) out-of-pocket expenses incurred in defending that Proceeding or in any related investigation or negotiation, including court costs, witness fees, and attorneys' and other professionals' fees and disbursements arising out of that Proceeding.

- W. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that *Texas Government Code*, Chapter 2271 applies to this Agreement, PROVIDER certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- X. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, PROVIDER certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. PROVIDER acknowledges this Purchase Order may be terminated if this certification is or becomes inaccurate.
- Y. **Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, *Texas Government Code*, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- Z. **Right of Review and Records Retention.**
 - a. PROVIDER will preserve all contracting information, as defined under *Texas Government Code*, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven (7) years after the conclusion of the Agreement. PROVIDER also agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than seven (7) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case PROVIDER agrees to maintain the same until TDEM, the applicable federal administrator, the Comptroller General of the United States or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims or other such questions.
 - b. PROVIDER and its subcontractors, if any, shall properly, accurately and completely maintain all books, documents, papers and records of PROVIDER's that are directly pertinent to this Agreement and shall make such materials available to TDEM, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives at their respective offices, at all reasonable times and as often as the aforementioned may deem necessary during the Term of this Agreement, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection,

examination, and making excerpts or copies of same by TDEM and any of its authorized representatives.

- c. PROVIDER agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - d. **PROVIDER SHALL ENSURE THAT ALL SUBCONTRACTS AWARDED REFLECT THE REQUIREMENTS OF THIS SECTION, AND THE REQUIREMENT TO COOPERATE.**
 - e. PROVIDER will be deemed to have read and have knowledge of all applicable federal, state, and local laws, regulations, and rules including, but not limited to, those identified in Exhibit C hereto, governing audit requirements pertaining to work performed under this Agreement.
 - f. PROVIDER shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to TDEM the Texas State Auditor's Office, the United States Government, and/or their authorized representatives, sufficient information to determine compliance with the terms and conditions of this Agreement and all state and federal rules, regulations, and statutes including, but not limited to, the applicable laws and regulations provided in Exhibit C hereto.
 - g. PROVIDER acknowledges and agrees that TDEM shall have access to any and all such documents at any and all times, as deemed necessary by TDEM, during said retention period. Additionally, PROVIDER agrees to provide TDEM, any FEMA or other federal Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any book, documents, papers, and records of PROVIDER which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. TDEM and PROVIDER acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States. TDEM may, at its election, require PROVIDER to return the documents to TDEM at PROVIDER's expense prior to or at the conclusion of the retention period. In such event, PROVIDER may retain a copy of the documents.
- AA. **Representations and Warranties.** If PROVIDER is a business entity, PROVIDER warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of PROVIDER has been duly authorized to act for and bind PROVIDER.

- BB. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. TDEM and PROVIDER can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

TDEM: Texas Division of Emergency Management
1033 La Posada Dr.
Austin, TX 78752
Attention: Quenya Evans
Phone: (512)424-2288
E-mail: Quenya.Evans@tdem.texas.gov

With a copy to: Texas A&M Engineering Experiment Station
Fiscal Office - Procurement and Contracting
7607 Eastmark Drive
College Station, TX 77840
Attention: Mary Williams
Phone: (979) 458-7463
Fax: (979) 458-7464
Email: mc-williams@tamu.edu

PROVIDER: SPARTAN MEDICAL LLC:
1445 Research Blvd. Suite 520
Rockville, MD 20850
US
Phone: (703) 944-2554
Email: VinceProffitt@SpartanMedSpine.com

- CC. **E-Verify.** By entering into this Agreement, PROVIDER certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security's e-Verify system to determine the eligibility of (a) all persons employed during the contract term to perform duties within Texas; and (b) all persons (including subcontractors) assigned by the PROVIDER to perform scope of work pursuant to the Agreement.
- DD. **DHS or Other Federal Seals, Logos, and Flags.** PROVIDER shall not use the DHS or other federal seal(s), logos, crests or reproductions of flags or likenesses of DHS or other federal agency officials without specific FEMA or applicable federal agency pre-approval.

- EE. **Compliance with Federal Law, Regulations, and Executive Orders.** PROVIDER acknowledges that federal financial assistance funds will be used to fund the Agreement. PROVIDER will comply with all applicable federal law, regulations, executive orders, federal policies, procedures, and directives.
- FF. **Clean Air Act.** The following is only applicable if the amount of the contract exceeds \$150,000.
- a. PROVIDER agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
 - b. PROVIDER agrees to report each violation to TDEM and understands and agrees that TDEM will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - c. PROVIDER agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or other Federal funds.
- GG. **Federal Water Pollution Control Act.**
- a. PROVIDER agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
 - b. PROVIDER agrees to report each violation to TDEM and understands and agrees that TDEM will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - c. PROVIDER agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or other Federal funds.
- HH. **Suspension and Debarment.**
- a. This Agreement is a covered transaction for purposes of 2 C.F.R. pt 180 and 2 C.F.R. pt. 3000. PROVIDER certifies that PROVIDER, PROVIDER's principals (defined at 2C.F.R. Sec. 180.995), or its affiliates (defined at 2 C.F.R. Sec. 180.905) are not excluded (defined at 2 C.F.R. Sec. 180.940) or disqualified (defined at 2 C.F.R. Sec. 180.935).
 - b. PROVIDER must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - c. This certification is a material representation of fact relied upon by TDEM. If it is later determined that PROVIDER did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, in addition to remedies available to TDEM, the Federal Government may pursue available remedies, including but limited to suspension and/or debarment.

- d. PROVIDER agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000 during the term of this Agreement. PROVIDER further agrees to include a provision requiring such compliance in its lower tier covered transactions.

II. **Byrd Anti-Lobbying Amendment, 31 U.S.C. Sec. 1352 (as amended).** PROVIDER shall file the required certification attached hereto as Exhibit E. Each contracting tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. Sec. 1352. Each contracting tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

JJ. **Procurement of Recovered Materials.**

- a. In the performance of this Agreement, PROVIDER shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired – (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) meeting contract performance requirements; or (iii) at a reasonable price.
- b. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

KK. **Civil Rights.**

- a. PROVIDER agrees to comply with state and federal anti-discrimination laws, including:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.);
 - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);
 - iv. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
 - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
 - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011 et seq.); and
 - vii. The System Agency's administrative rules, as set forth in the *Texas Administrative Code*, to the extent applicable to this Agreement.

PROVIDER agrees to comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the

grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.

- b. PROVIDER agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. PROVIDER agrees to take reasonable steps to provide services and information, both orally and in writing and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- c. In particular, PROVIDER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. PROVIDER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. PROVIDER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- d. PROVIDER will, in all solicitations or advertisements for employees placed by or on behalf of PROVIDER, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- e. PROVIDER will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- f. PROVIDER will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- g. PROVIDER will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - h. In the event of PROVIDER's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - i. PROVIDER will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. PROVIDER will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- LL. **Energy Conservation.** If applicable, PROVIDER agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- MM. **Federal Assurances.** PROVIDER further certifies that the Federal Assurances set forth in Exhibit D of this Agreement, which is attached and incorporated by reference, have been reviewed and that PROVIDER is in compliance with each of the requirements reflected therein.
- NN. **Federal Certifications.** PROVIDER certifies that it is in compliance with all applicable federal laws, rules, or regulations, including but not limited to those listed in Exhibit C as they may pertain to this Agreement.
- OO. **Compliance with Contract Work Hours and Safety Standards Act.**
- a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of

laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- c. Withholding for unpaid wages and liquidated damages. PROVIDER shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

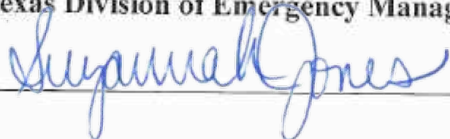
PP. **Fraud and False or Fraudulent or Related Acts.** PROVIDER acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

[Signature Page Follows]

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

The Texas Division of Emergency Management

By

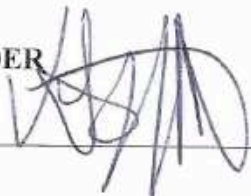


9-23-20

Date

PROVIDER

By



26 Aug 2020

Date

EXHIBIT A – SCOPE OF WORK

- A. Type of Test: The PCR or Antibody Test (the “COVID-19 Test”), which has been authorized by the FDA under an EUA, is a real-time reverse transcription polymerase chain reaction (rRT-PCR) test for the detection of nucleic acid from SARS-CoV-2 by collecting clinical specimens using Mouth-Saliva, Nasal or Blood Draw from individuals suspected of COVID-19 in consultation with a healthcare provider. The EUA for the COVID-19 Test is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of in vitro diagnostics for detection and/or diagnosis of COVID-19 under Section 564(b)(2) of the Federal Food, Drug, and Cosmetic Act (the “Act”) or the EUA is terminated or revoked sooner under Section 564(g) of the Act.
- B. Testing Program to Include:
- (1) Establish and manage test sites and provide personnel and all logistical support items and services to collect and process the tests
 - a. Site locations, dates and times will be scheduled in coordination with the TDEM Point of Contact and with the local designated representatives
 - b. No registered sex offenders will be allowed to work a State of Texas test site
 - c. Meetings and conference calls with all stakeholders may be part of the requirement in establishing sites
 - (2) Provide COVID-19 Polymerase Chain Reaction (PCR) testing using defined criteria and approved testing methodologies; only FDA/EUA approved testing kits shall be used
 - (3) Provide transportation of tests collected to a CLIA certified laboratory for test resulting
 - (4) Test results must be provided within 48 hours of testing but no later than 72 hours. The 48 hours begins at the end of day (11:59 pm) of the day the test was collected. There will be a financial penalty for late test results.
 - a. tests results provided between 72-96 hours shall be billed at a 50% price reduction
 - b. tests results are after 96 hours, shall be provided at no cost
 - c. Weather and other non-controllable delays will be taken into consideration for the 48-hour time-frame.
 - (5) Provide test results to patients and counsel persons testing positive;
 - a. Counseling to patients testing positive will be conducted by a medical professional if required under Texas statute, rule or policy.

- (6) Collect data and submit required reporting through Texas State Electronic Lab Reporting System
- (7) Manage billing for public and private health insurance; and bill TDEM for any tests that were not covered by public or private health insurance (including Medicare and Medicaid)
- C. Laboratory Services and Lab Results: PROVIDER will promptly process the test kits upon receipt of the specimens and provide the laboratory results ("**Lab Results**") to each Patient within 48 hours from the time the specimen is delivered at the laboratory. PROVIDER shall correct any error in the Lab Results within 24 hours of discovering such error.
- D. Reporting: PROVIDER will report test results to local and state public health authorities as required by law. At a minimum, all lab results must be delivered to the Texas Disease Surveillance System (NEDSS) within 24 hours of resulting via standardized HL7 v.2.5.1 compliant transactional electronic laboratory reports (ELR).

ELR must be sent via a qualified Health Information Exchange in the State of Texas. The ELR must also be in conformance with the Texas standard for ELR submissions to the NEDSS which can be found at <https://michiganhealthit.org/public-health/mdss/>

PROVIDER will provide access to a portal to the TDEM POC and the TDEM regional POC for daily counts of tests collected at each site with access to non-PHI data.

The State reserves the right to audit documentation or processes and/or inspect test sites and labs during the period of this agreement.

The PROVIDER will have an orientation briefing with TDEM before being allowed to conduct their first test site.

EXHIBIT B – INSURANCE

PROVIDER shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the *Texas Insurance Code* and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to TDEM. By requiring such minimum insurance, TDEM shall not be deemed or construed to have assessed the risk that may be applicable to PROVIDER under this Agreement. PROVIDER shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. PROVIDER is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure

to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to TDEM at least ten days before the effective date of the cancellation.

<u>Coverage</u>	<u>Limit</u>
A. <u>Worker's Compensation</u>	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident
	\$1,000,000 Disease/Employee
	\$1,000,000 Disease/Policy Limit
B. <u>Automobile Liability</u>	
Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;	
C. <u>Commercial General Liability</u>	
Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000
D. <u>Professional Liability (Errors & Omissions)</u>	
Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of PROVIDER and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, PROVIDER agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least three (2) years after the expiration or cancellation of this Agreement.	

- E. **Umbrella Liability Insurance**
F. **Cyber Liability Coverage**

\$5,000,000 Limit
\$1,000,000 Limit

G. PROVIDER will deliver to TDEM:

The required commercial general liability policy will be issued on a form that insures PROVIDER'S or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any Services by PROVIDER under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System, and The Texas Division of Emergency Management as Additional Insureds up to the actual liability limits of the policies maintained by PROVIDER. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System, and The Texas Division of Emergency Management. No policy will be canceled without unconditional written notice to TDEM at least ten days before the effective date of the cancellation. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to TDEM ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Exhibit.

Any deductible or self-insured retention must be declared to and approved by TDEM prior to the performance of any Services by PROVIDER under this Agreement. PROVIDER is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be emailed to the following TDEM contact at: Texas A&M Engineering Experiment Station

Fiscal Office - Procurement and Contracting
7607 Eastmark Drive
College Station, TX 77840
Attention: Mary Williams
Phone: (979) 458-7463
Fax: (979) 458-7464
Email: me-williams@tamu.edu

The insurance coverage required by this Agreement will be kept in force until all Services have been fully performed and accepted by TDEM in writing, except as may be noted.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

Texas Division of Emergency Management HUB Goals:

- 21.1 % for all building construction, including general contractors and operative builders' contracts,
- 32.9 % for all special trade construction contracts,
- 23.7 % for professional services contracts,
- 26.0 % for all other services contracts, and
- 21.1 % for commodities contracts

HUB Subcontracting Opportunities Identified:

1. Personal Protection Equipment (PPE-masks, gloves, gowns, shields etc.)
2. Equipment Rental for Mobile Sites (tents, chairs, desk, portable restroom)

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: Spartan Medical, Inc State of Texas VID #: 12620314406
Point of Contact: Vince Proffitt Phone #: 703-944-2554
E-mail Address: VinceProffitt@SpartanMedSpine.com Fax #: _____
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. Requisition #: TDEM-RFP-2257 Bid Open Date: 07/13/2020

(mm/dd/yyyy)

Enter your company's name here: Spartan Medical, IncRequisition #: TDEM-RFP-2257**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including contracted staffing, goods and services will be subcontracted. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- ☐ - Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b of this SECTION and continue to Item c of this SECTION.)
- ☒ - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If No, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- ☐ - Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- ☐ - No (If No, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you do not have a continuous contract* in place with for more than five (5) years, meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- ☐ - Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- ☐ - No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: Spartan Medical, IncRequisition #: TDEM-RFP-2257**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: Spartan Medical, IncRequisition #: TDEM-RFP-2257

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

At this time, Spartan Medical is offering to provide COVID-19 test kits and related medical supplies. We are able to ship these products to any location within the State of Texas. Spartan Medical does not require the assistance of any subcontractors to accomplish this task.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.



Signature

Vincent Proffitt

Printed Name

Owner

Title

7/13/2020

Date
(mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

Rev. 2/17

Requisition #: TDEM-RFP-2257

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Item Number: _____ Description: _____

[illegible]

Page 1 of 1
(Attachment A)

HSP Good Faith Effort - Method B (Attachment B)

Rev. 2/17

Enter your company's name here: Spartan Medical, Inc

Requisition #: TDEM-RFP-2257

IMPORTANT: If you responded "No" to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - Yes (If Yes, continue to SECTION B-4.)

☐ - No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs **at least seven (7) working days** to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.
- b. List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers **at least seven (7) working days** prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

- d. List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

Rev. 2/17

Enter your company's name here: Spartan Medical, Inc

Requisition #: TDEM-RFP-2257

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/passcblsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

SECTION A: PRIME CONTRACTOR'S INFORMATION	
Company Name: <u>Spartan Medical, Inc</u>	State of Texas VID #: <u>12620314406</u>
Point-of-Contact: _____	Phone #: <u>703-944-2554</u>
E-mail Address: <u>VinceProffitt@SpartanMedSpine.com</u>	Fax #: _____
SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION	
Agency Name: _____	
Point-of-Contact: _____	Phone #: _____
Requisition #: <u>TDEM-RFP-2257</u>	Bid Open Date: <u>07/13/2020</u> (mm/dd/yyyy)
SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION	
1. Potential Subcontractor's Bid Response Due Date:	
If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,	
we must receive your bid response no later than _____ on _____.	
Central Time Date (mm/dd/yyyy)	
<i>In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).</i>	
<i>(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)</i>	
2. Subcontracting Opportunity Scope of Work:	
3. Required Qualifications: <input type="checkbox"/> - Not Applicable	
4. Bonding/Insurance Requirements: <input type="checkbox"/> - Not Applicable	
5. Location to review plans/specifications: <input type="checkbox"/> - Not Applicable	